

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES-CLEMENT; (family of  
RUSSELL), Affiant, Real Party of  
interest, private attorney General,  
Sovereign, Informant on Information to  
this Court, Relator, Third Party agent  
for JAMES C. RUSSELL, a  
FICTITIOUS ACTOR only in name-  
style; ex rel. United States of America  
(Republic);

Plaintiff,

v.

LENDING CONNECTION, INC., and  
FLAGSTAR BANK, INC., and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS (MERS),  
and NORTHWEST TRUSTEE  
SERVICES, INC., and SANDRA  
PARKER, in her private capacity, and  
NICK ASHBY, in his private capacity,

Defendants.

NO. CV-07-3082-RHW

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS WITHOUT  
PREJUDICE**

Before the Court is Defendants Flagstar Bank, FSB, Mortgage Electronic  
Registration Systems, Sandra Parker, and Federal National Mortgage Association's  
Motion to Dismiss (Ct. Rec. 38). This motion was heard without oral argument.

Plaintiff did not file a timely opposition to the motion. Rather, on April 23,  
2008, Plaintiff filed a Petition to Strike all Previous Motions of Defendants, For  
Cause, Under Title 28, USC (Ct. Rec. 41).

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS  
WITHOUT PREJUDICE ~ 1**

1 On February 13, 2008, this Court denied with leave to renew Defendant  
2 NWTs Trustee Service, Inc.'s Motion to Dismiss for Failure to State a Claim.  
3 Plaintiff was granted thirty (30) days to file an amended complaint, which needed  
4 to allege "sufficient facts to establish federal subject-matter jurisdiction." (Ct. Rec.  
5 35). In the order, Plaintiff was notified that his case would be "dismissed unless  
6 Plaintiff files a Second Amended Complaint within thirty (30) days of the date of  
7 this order." *Id.*

8 Defendants now move the Court to dismiss the complaint on the grounds  
9 that thirty days has passed since the Court entered its order, and Plaintiff has not  
10 filed or served a second amended complaint. In fact, more than seventy days has  
11 passed since the order was entered. During the interm, Plaintiff has filed two  
12 documents with the Court, an Affidavit of Prejudice (Ct. Rec. 36) (filed March 14,  
13 2008) and a Petition to Strike All Previous Motions of Defendants, For Cause,  
14 Under Title 28, USC (Ct. Rec 41) (filed April 23, 2008). Notably, however,  
15 Plaintiff has not field a Second Amended Complaint. Plaintiff has been afforded  
16 an opportunity to cure the defects in his complaint, but has failed to do so.  
17 Defendants' Motion to Dismiss Plaintiffs' quiet title claim without prejudice is  
18 granted.

19 Defendants further request that, "in all other respects, the Complaint, First  
20 Amended Complaint, and all claims and causes of action be dismissed *with*  
21 *prejudice* for failure to state a claim upon which relief may be granted." (Ct. Rec.  
22 38) (emphasis added). Here, Defendants point to no other claim cause of action for  
23 which they call upon this Court to review. If a 12(b)(6) motion to dismiss with  
24 prejudice is granted, the record should clearly dictate such a result. *Klamath-Lake*  
25 *Pharmaceutical Ass'n v. Klamath Medical Service Bureau*, 701 F.2d 1276, 1292  
26 (9<sup>th</sup> Cir. 1983).

27 Plaintiffs' Affidavit of Prejudice and Petition to Strike All Previous Motions  
28 of Defendants, For Cause, Under Title 28, USC will not be addressed. The

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS  
WITHOUT PREJUDICE ~ 2**

February 13 Order expressed this Court's concern over lack of subject-matter jurisdiction. Plaintiff has been given more than seventy days to establish subject-matter jurisdiction, but has failed to do so. Because Plaintiffs' Complaint fails to establish subject-matter jurisdiction, this Court lacks the authority to reach the merits of the Affidavit of Prejudice and the Petition to Strike All Previous Motions of Defendants, For Cause, Under Title 28, USC. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (discussing the limited nature of federal courts' jurisdiction). The Court notes, however, that the basis for Plaintiff's Petition to Strike all Previous Motions of Defendants, For Cause, Under Title 28, USC, is that this Court lacks jurisdiction in the matter. On this point, the Court agrees.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants Flagstar Bank, FSB, Mortgage Electronic Registration Systems, Sandra Parker, and Federal National Mortgage Association's Motion to Dismiss (Ct. Rec. 38) is **GRANTED**.

2. Plaintiff's Petition to Strike All Previous Motions of Defendants, For Cause, Under Title 28 USC (Ct. Rec. 41) is **DENIED**.

3. The above-captioned matter is **DISMISSED** without prejudice.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, forward copies to the Plaintiff and counsel, and close the file.

**DATED** this 30<sup>th</sup> day of April, 2008.

*S/ Robert H. Whaley*

ROBERT H. WHALEY  
Chief United States District Judge

Q:\CIVIL\2007\Russell\order granting motion to dismiss.wpd